

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

CS WANG & ASSOCIATE, et al.,)	
)	
Plaintiffs,)	Case No. 16 cv 11223
)	
v.)	
)	Hon. Rebecca R. Pallmeyer
WELLS FARGO BANK, N.A., et al.,)	
)	
Defendants.)	

**VANTIV DEFENDANTS’ MOTION FOR LEAVE TO FILE SUR-REPLY TO
PLAINTIFFS’ FALSE AND IRRELEVANT STATEMENTS REGARDING
SETTLEMENT**

The Vantiv Defendants seek leave to file a sur-reply brief to Plaintiffs’ reply in further support of their motion to renew their motion for class (Doc. 633). In their reply, Plaintiffs raised new arguments related to settlement discussions and attached new evidence in the form of a declaration by Plaintiffs’ counsel purporting to recount settlement discussions with counsel for Vantiv Defendants. These new arguments are immaterial to the issue before the Court, i.e. the impact of the Ironwood bankruptcy, and Plaintiffs’ counsel’s declaration is inaccurate and misleading. The Vantiv Defendants seek leave to file a limited sur-reply to address Plaintiffs’ new arguments and evidence related to settlement discussions.

This Court has permitted the filing of a sur-reply in this case under similar circumstances. *See* Doc. 511. Courts in the Seventh Circuit routinely allow sur-replies in these circumstances. *See, e.g., Thompson v. City of Indianapolis*, No. 1:15-cv-01712-TWP-DML, 2017 WL 1546316, *2 (S.D. Ind. Apr. 28, 2017) (“Courts allow a surreply only in limited circumstances to address new arguments or evidence raised in the reply brief.”); *Almy v. Kickert Sch. Bus Line, Inc.*, No. 08-CV-2902, 2013 WL 80367, *15 (N.D. Ill. Jan. 7, 2013) (granting leave to file sur-reply where

reply brief “did not raise new arguments but was accompanied by exhibits not previously submitted or discussed”); *Cummins, Inc. v. TAS Distrib. Co.*, 676 F. Supp. 2d 701, 706 (C.D. Ill. 2009) (“Typically, a surreply is allowed where the moving party raises new factual or legal issues in its reply brief, in order to ensure that the non-moving party has an adequate chance to respond to the new issues.”).

For the foregoing reasons, the Vantiv Defendants request the Court grant their motion for leave to file the attached sur-reply brief.

Dated: October 21, 2021

Respectfully submitted,

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/s/ John M. Touhy

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Fifth Third Bank, Vantiv, Inc. and

National Processing Company

CERTIFICATE OF SERVICE

The undersigned attorney certifies that on October 21, 2021, he caused a copy of the foregoing to be filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ John M. Touhy

John M. Touhy